

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**SONYA HOOKER, SYBIL
RUMMAGE, DONNA DEAL,
KENNETH MICHAEL DEAL and
BETTY DEAL, individually and
on behalf of a class of those
similarly situated,**

Plaintiffs,

V.

**THE CITADEL SALISBURY LLC,
SALISBURY TWO PROPCO LLC,
ACCORDIUS HEALTH LLC, THE
PORTOPICCOLO GROUP, LLC,
SIMCHA HYMAN and NAFTALI
ZANZIPER,**

Defendants.

DEFENDANTS' MOTION TO DISMISS

Defendants, through counsel, pursuant to LR 7.3, Fed. R. Civ. P. 12, the Emergency or Disaster Treatment Protection Act (Session Law 2020-3) (“EDTPA”), An Act to Provide Limited Immunity from Liability for Claims Based on Transmission of Coronavirus Disease 2019 (“COVID-19”), House Bill 118, N.C. Gen. Stat. § 99E-70 to § 99E-72, hereby respectfully move for dismissal of the Complaint filed against them, and show:

1. Pursuant to N.C. Gen. Stat. § 90-21.130 to § 90-21.134, known as the “Emergency or Disaster Treatment Protection Act” (“EDTPA”), and other statutes designed to shield healthcare entities from liability during the COVID-19 pandemic,

Defendants are immune from liability and Plaintiffs' Complaint is due to be dismissed, with prejudice.

2. Plaintiffs' individual claims for Breach of Contract, Unfair and Deceptive Trade Practices, Breach of Fiduciary Duty, Negligent Infliction of Emotional Distress, and the catch all Count Five, fail and should be dismissed.

3. In support, Defendants submit their brief in support with exhibits.

4. Defendants attach their proposed order as Exhibit A.

Wherefore, Defendants respectfully request the Court dismiss the Complaint filed against them, with prejudice.

Respectfully submitted, this the 19th day of July, 2021.

HAGWOOD AND TIPTON PC

By: /s/ Michael E. Phillips

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Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document on all of the parties to this cause by:

_____ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

_____ Depositing a copy hereof, postage paid, in the United States Mail, addressed to the attorney for each said party as follows:

 X Via electronic mail addressed to the attorney for each party as follows:

_____ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:

_____ Telecopying a copy hereof to the attorney for each said party as follows:

Mona Lisa Wallace, Esq.
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This, the 19th day of July 2021.

/s/ Michael E. Phillips
Michael E. Phillips